IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.570 OF 2004

I.B.P. Co.Ltd. ...Petitioners

v/s

Cyprian D'Souza ...Respondent

Mr P.K. Rele with Mr Piyush Shah i/b Mr V.N. Tayade for Petitioners.

Mr A.D. Shetty with Ms R. Joshi for Respondent.

WITH

WRIT PETITION NO.2972 OF 2005

Cyprian D'Souza ...Petitioner

v/s

I.B.P. Co.Ltd. ...Respondents

Mr A.D. Shetty with Ms R. Joshi for Petitioner.

Mr P.K. Rele with Mr Piyush Shah i/b Mr V.N. Tayade for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 24TH JULY 2006.

P.C. :-

1. Writ petition No.2972 of 2005 is filed by the workman challenging Part I of the award made by the Industrial Tribunal holding that the demestic enquiry held against the workman was proper and was held in accordance with the principles of natural justice and that the findings of the Enquiry Officer are correct. Writ petition No.570 of 2004 is filed by the employer challenging Part II of the award whereby the Industrial Tribunal held that the punishment of dismissal is disproportionate to the misconduct and therefore, the Industrial Tribunal has granted reinstatement in service to the workman without back wages and has also directed withholding of two increments of the workman. So far as petition filed by the workman is concerned, I have heard learned counsel appearing for petitioner at length. I do not find any patent illegality in Part I of the award passed by the Industrial Tribunal. I find that no exception can be taken to the finding recorded by the Industrial Tribunal that the enquiry was held in consonance with the principles of natural justice and that the findings of the Enquiry Officer cannot be

termed as perverse. Therefore, there is no reason to interfere with the findings of the Industrial Tribunal which are findings of fact. Writ petition No.2972 of 2005 is therefore dismissed, rule is discharged with no order as to costs.

2. So far as writ petition No.570 of 2004 is concerned, the Industrial Tribunal has reduced the punishment because according to the Industrial Tribunal, the workman was only a cleaner on the lorry of the employer, that the charge that is proved against him is theft of petrol. The Industrial Tribunal has also found that the workman has rendered 12 years of service and during that period, there was no charge levelled against him and that his record of service is clean and therefore, the Industrial Tribunal has fond that the punishment is disproportionate. I have heard learned counsel appearing for both the sides at length. The reasons that have been given by the Industrial Tribunal for reducing the punishment are to be found in paragraph 6 of Part II award which read as under :-

> "6. On perusal of the record it is seen that the workman put about 12 years service. Senior Manager Mr Nayak admitted that workman was not punished earlier which shows that his past record was clean. Considering the age of

> the workman, the nature of misconduct and that he is away from service since many years and that his past record is umblemished, relying on the decisions referred to above, to my view, the penalty of termination is imposed on the workman, a poor cleaner for stealing of five litres petrol is rather harsh, disproportionate and it needs to be interfered and that punishment of withholding of two increments in future is apt and proportionate and the same needs to be imposed without giving back wags. Issues are answered accordingly and hence the order."

. The learned counsel appearing for respondent has relied on a judgment of the learned Single Judge in writ petition No.1289 of 1988 (Mahindra and Mahindra Ltd. v/s Mr G.V. Akerkar). The judgment reads thus :-

> "1. What is established is a theft of Rs.9.50 worth of petrol. For this the 1st Respondent was dismissed. The Labour Court has held the punishment to be disproportionate to the offence and substituted by a far milder punishment while ordering reinstatement with full back wages.

2. I am in agreement with the Labour Court. To dismiss an employee of 10 years standing and earning around Rs.2,000/- per month for once pilfering petrol worth Rs.9.50 is extremely harsh and disproportionate had the Petitioner aware a punishment that was in the circumstances reasonable the Court would not have intervened. If the punishment is now too lenient which is not acceptable, the Petitioners must thank themselves.

. Dismissed."

. In so far as the present petition is concerned, the measuring rod was found in the cabin of the driver. The workman was merely a cleaner and the Industrial Tribunal, considering his past record of service, has reduced the punishment. In my opinion, considering the judgment of the learned Single Judge in the case of Mahindra and Mahindra Ltd. referred to above, it will not be appropriate for this Court to interfere with the Part II of the award as the finding recorded by the Tribunal cannot be termed as a finding which is impossible to be reached in the facts and circumstances of the case in view of the judgment of the learned Single Judge referred above which is binding on the Tribunal. Writ petition No.570 of 2004 is therefore

dismissed, rule is discharged with no order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.